BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL AT BANGALORE.

Dated 21st July 1969.

Present

Sri R. V. Kollali, B.A., LL.B. ... Presiding Officer.

Complaint No. 19 of 1968
in A. I. D. No. 13/1966.

Complainant.—

Sri M. Yellappa, C/o B. E. L. Karmik Sangha, Bangalore-13.

Vs.

Opposite Party.—

The Management of the Bharat Electronics Ltd Bangalore-13.

Appearances.

For the Complainant :—Sri K. P. Sachindranath, Legal Adviser B. E. L. Karmik Sangha, Bangalore.

For the Opp. Party :—Sri B. T. Parthasarathy, Advocate, Hospital Road, Avenue Road, Bangalore.

AWARD.

The Complainant had been promoted as Assistant Store-Keeper-I on 31st March 1966 on a salary of Rs. 145 per month *plus* usual rate of Dearness Allowance; on 14th June 1968, the Complainant was said to have assaulted one Muniswamy; in regard to the said assault, a charge-sheet was issued on 20th June 1968 calling for the Complainant's explanation; on 1st July 1968, an enquiry was conducted by the Management and the Committee found the Complainant guilty of the charge; the Management had placed the Complainant under suspension from the date of the charge-sheet to 4th September 1968 and withheld his wages from the date of the charge-sheet to 5th July 1968; after the Enquiry Committee's findings, the Management demoted the Complainant on 23rd July 1968 whereby the Complainant suffered a deprivation

of Rs. 120 per month in his total emoluments. Alleging that the incident about which the charge-sheet had been issued had nothing to do with the employment but was purely a domestic one and that the enquiry was not conducted in accordance with the principles of natural justice and the findings were perverse and that the Management had inflicted double punishment, once by suspension and again by demotion; the Complainant had preferred this Complaint; he has also stated that a reference for determining the Dearness Allowance payable by the Management to its employees is pending and the infliction of the punishment without express permission from the Tribunal is in breach of Section 33 of the Industrial Disputes Act. It is also stated by the Complainant that the Management's action amounts to an altering of the service conditions of the Complainant which would prejudice the workman concerned in the dispute.

2. The Management by its objections denied the allegations of the Complainant that the enquiry was not in conformity with the principles of natural justice or that the incident was purely a domestic one and had nothing to do with the employment or that the findings were perverse or that there was double punishment the Management also asserted that during the domestic enquiry, the Complainant himself admitted the assault committed by him on Muniswamy; it was also contended that there is no violation of Section 33 of the Act, as no permission was required in the circumstances of the case.

3. By his reply, the Complainant reiterated the grounds set out in the complaint.

4. The point as to the maintainability of the complaint was heard as a preliminary question. It is clear from the tenor of the complaint that the Complainant is placing his claim on the allegations that there has been a change in the condition of his service during the pendency of an industrial dispute. Therefore, it must be taken that the complaint is made on the basis of an allegation of a breach of Section 33 (1) (a), Section 33 (1) (a) provides that no employer shall in regard to any matter connected with the dispute alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings.

5. The argument advanced on behalf of the Complainant was that by demoting the Complaint and reducing his salary.

the scale of Dearness Allowance which is pending adjudication would be affected and therefore there is breach of the provision of Sec. 33 (1) (a). Now one of the points referred to for adjudication, is about the demand of the workmen of the Bharat Electronics Ltd., that the Dearness Allowance be linked with the consumer price index of the Bangalore City. Therefore the Complainant would undoubtedly be one of the workmen concerned in the dispute. The question would however be as to whether the alteration in the instant case can be considered to be in regard to any matter connected with the dispute. A number of rulings were cited in support of the proposition canvas on behalf of the Complainant. These may be noticed now :—

In General assurance Society Ltd., and its employees Association, 1952 (II) LLJ p. 193, the Management had stopped the usual annual increments to the employees and it had also arbitrarily made deductions in the usual pujah bonus which it had declared payable to the employees. It was held that the Management's action had been very unfair and reprehensible. It was also observed that annual increments or the grade scales of pay are part of the conditions of service, which cannot be changed or abrogated with the permission of the Tribunal. It has to be noticed that it does not furnish an incident of the change of service conditions relating to a single workman on account of some misconduct The Management had changed the service condition in general.

In Dharangadhara Chemical Works, Ltd.,-vs-Kanju Kalu and 0 others, 1955 (I) LLJ p. 316, the Management required the workmen to carry increased bags of load on their back during the pendency of an industrial dispute pending adjudication. It was held that this amounted to an alteration of conditions of service which could not be permitted in the absence of the permission from the Tribunal before which the dispute is pending. The case again deals with the case of a general alteration of the condition of service and not limited to single worker.

In New India Motors-vs-Morris, 1960 (I) LLJ p. 551, It was ruled that the expression workmen concerned in such dispute could not be limited only to such of the workmen who are directly concerned in the dispute in question but would include all workmen on whose behalf the dispute had been raised. I have already accepted the principles enunciated in this ruling when I stated that the Complainant is a concerned workmen in the dispute.

Sridharan Motor Service-*vs*-Industrial Tribunal, Madras and :hers, 1959 (I) LLJ p. 380 was also cited. In that case it was eld that where a pending dispute related to fixation of basic wage :ale, change effected by the employer in working hours of spread ver working hours could not be considered to be in respect of natter connected with the pending dispute. If the test laid down a this ruling were to be applied to the facts of the present case he conclusion will have to be that the dispute that is pending djudication dealing, as it does, with the question of linking of the Dearness Allowance with the price index cannot be considered to e in any manner connected with the demotion of the Complai- ant. The Dearness Allowance obviously would be a graded one nd the Complainant would be getting the D. A. appropriate to the vage scale he has been drawing at any particular period of time. The punishment of demotion does not directly affect the D. A. cale at all. The punishment having been imposed for a miscon- uct, which has also no concern with the dispute, cannot be consi- lered to be introducing an alteration in the condition of the ervice within the meaning of Sec. 33 1 (a).

6. Sec. 33 (1) (b) has no application at all to the facts of the present case.

7. It should be noted that while the Management contended in its objections that the Complianant had admitted the incident of assault during the enquiry, the Complianant's reply has been silent on that aspect. I am stating this for the sole purpose of empha- sising the point that a punishment has been imposed on the Complainant for the misconduct of assult on another employee. The prejudice caused to the workmen in the matter of the D. A. is not the direct result of the punishment but is a remote one. The action of the Management has not been a voluntary act in the sense that the Management of its own accord and with some ulterior motive proceeded to reduce the Complainant's pay scale by demoting him only as a matter of a whim. The Complainant having been responsible for a misconduct, the Management has imposed the punishment for the misconduct. No exception, to my mind, can be taken to such a course of conduct on the part of the Management. If the Management cannot enforce discipline in its establishment during the pendency of a dispute for adjudication in regard to a matter in which purely a question of discipline is involved and which is not connected with the dispute that is pend- ing adjudication, indicipline would be at a premium and discipline at a discount. It is for this reason that Sec. 33 (1) (a) and (b)

mposed a ban on the Management's rights only in regard to any matter connected with the dispute and termination in any other matter.

8. In view of the above discussions I am opinion that the Complaint is not tenable in view of the facts and circumstances of the case. I pass a fallowing award :—

AWARD

The Complaint is held not tenable and is rejected.

R. V. KOLLARI,
Presiding Officer, Additional In
Tribunal, Bangalore